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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/059,627	01/29/2002	Yawei Ni	CARR-0084(103216.00252	5288
7590	02/07/2005		EXAMINER	
T. Ling Chwang Suite 600 2435 N. Central Expressway Richardson, TX 75080			MELLER, MICHAEL V	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/059,627

Applicant(s)

NI ET AL.

Examiner

Michael V. Meller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-77 is/are pending in the application.
- 4a) Of the above claim(s) 2,4,6,8-12,16,18-22 and 26-77 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5, 7, 13-15, 17, 23-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

The restriction requirement is maintained for the reasons of record.

Claims 2, 4, 6, 8-12, 16, 18-22 and 26-77 are withdrawn from further consideration by the examiner as being drawn to non-elected inventions which is of record.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 5, 7, 13-15, 17, 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 307847 (abstract), US 4996050 (col. 2-3), or WO 8203772 in view of EP 619,370 (abstract), US 5589451 (col. 3-4), US 5814605 (abstract), WO 97/13857 (abstract), or WO 98/16243 (abstract).

Applicant argues that just because the components are used individually in the art for the same purpose that there would have been no way that one of ordinary skill in the art would have had any idea to combine them. Applicant also argues that one would

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have thought that an enzyme like protease would destroy a protein like a growth factor protein.

Fact is, the components are used individually in the art for the same purpose. All of the references teach using their respective components (KGF or plasminogen) for the same purpose, namely to treat conditions dealing with repairing of blood vessels and healing of blood related diseases. It is not like the arts are so different that they were to read on different arts such as treating a cold and cancer. They all deal with treating blood related conditions, such as wound healing, surgery (where one wants to stop blood flow), thrombosis, etc.

The law is clear. All one of ordinary skill in the art has to know is that each of the elements individually are used in the art for the same purpose. The components are known individually in the art for the same purpose as is of record.

Thus, to put them together in the same composition is prima facie obvious.

Applicant argues that the specification on page 19, lines 13-27 provide evidence that they have unexpected results for their invention. What exactly is unexpected about this invention? Two known ingredients are used for the same purpose and a third composition is yielded. Applicant has provided no unexpected results. The specification does not mention anywhere that unexpected results were obtained. Where is the unexpected results for the third composition which is formed from known ingredients ? Since this cannot be found, the claims are properly rejected under this section. The addition of the language where the mixture comprises at least a biologically active

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fragment of the growth factor protein is inherent since the growth factor is biologically active.

This is a RCE of applicant's earlier Application No. 10059627. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 571-272-

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0967. The examiner can normally be reached on Monday thru Thursday: 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael V. Meller
Primary Examiner
Art Unit 1654

MVM